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Chapter 2 - ADMINISTRATIVE PROCEDURES

Many persons who become active in property owners' and condominium unit owners' associations have had some experience in business or civic organizations and are familiar with the general functions of officers, boards of directors, and committees as well as the operational procedures for meetings, elections, etc. This chapter discusses the administration of a condo or homeowners association and how this structure works to transfer authority and control, formulate effective policy and efficient operation, and promote reasonable enforcement of the rules, regulations and covenants.

Transition from Developer to Owners:

A condominium or homeowner association is created when the Declaration and other required documents are recorded in the County's Land Records Office. At this "moment of birth" the developer owns 100% of the (proposed) development and all votes allocated to the properties/units by the declaration. The developer is the entire association; he/she/they appoint the initial directors from business associates, conduct association meetings, and keep records of decisions and financial matters of the association separate from his/her/their business concerns. This total control of the association is gradually relinquished as residential units or properties (and their allocated votes) are sold to private owners. During this time, the developer usually appoints new owners to replace the initial directors on the Board but remains a voting member of the association until the last property or unit is sold. Typically, the developer has reserved certain rights (defined in the Declaration) to protect current and future business interests and responsibilities during completion of the development, even after the final sale of properties/units (and their votes) has been concluded.

A property owners' first involvement in the administration of the association usually takes place in the transition period when voting control of the association transfers to the (majority) owners who elect their own directors. This usually begins at a time set forth in the association's documents and correlates to a percentage of sales of the planned lots/units, or at a predetermined date when the developer anticipates substantial completion of the development, whichever comes first. For condominiums, the transition period must take place no later than when three-fourths of the ownership interest in the common elements have been sold, or at a specific time after the first unit is sold, whichever comes first. The maximum length of the latter period can vary from two to five years and depends upon whether the condominium is a contractible, expandable or a phased condominium. Regardless of the type of residential development, the transition period can be significantly affected by the regional economy, the rate of home sales, and by the financial health of the developer.

During the transition period, new owners become familiar with the operation and administration of the association for which they will shortly be responsible. This familiarization process may be planned and directed by the developer who prepares and distributes orientation materials, newsletters and other communications, and by holding meetings with the owners to discuss the operations, actions and objectives of the association. The association documents may

allow or require the developer to appoint an advisory board of directors and/or committees to work with him, or permit a board of owner-directors to be elected with the developer having veto rights over some or all board decisions. New owners must realize that a developer has budget responsibilities and a construction schedule that could be adversely affected by the owners' decisions.

Some developers take few or no steps to prepare the new owners for control of the association; some may even neglect or ignore the association altogether. This occurs more often where there are few common areas or tangible facilities and the association is not visible in the day-to-day routine of the community. In this event, owner involvement usually begins with complaints about unfinished construction, unacceptable conditions, cost responsibilities, safety hazards, or concern that the developer's bond will be released prior to correction. It is important for an association to maintain a list of defects, deficiencies and unacceptable conditions to give to the County inspector to enforce correction prior to the bond release. This causes communication among the new owners who take the initiative to prepare for their upcoming responsibilities by formulating a list of questions and concerns about the association's role and authority and requests an owners' meeting with the developer and county officials. Often such meeting or communication with the developer results in the owners activating the association or sharing in its operation with the developer. It is incumbent upon the owners to maintain their involvement in the association to become knowledgeable about its operations. If the developer does not involve owners in operating the association, they can learn by reading the association documents and reviewing the books and records (an owner's right under the Property Owners' Association Act, the Nonstock Corporation Act, and the Condominium Act), by talking with the developer's personnel, and by bringing attention to violations of the architectural controls or other covenants and requesting that they be corrected and enforced.

It is advisable for owners involved in the transition process to contact an attorney who is knowledgeable with community association law to provide advice and assistance, especially where the association has not been fully operational or where the developer is not responsive to the owners. An attorney can examine the Articles of Incorporation (filed by the developer) to determine their viability; examine the Covenants, Conditions and Restrictions (CC&Rs) and advise owners of their rights and responsibilities. An attorney can determine whether any more documents or amendments to existing documents need to be drafted, and can take steps to assure that the association's tax liability is minimized. During transition, owners usually need information and professional assistance to assist in the initial operation of the association. Prior to transfer of the association, a developer should provide the following:

- copies of the association's documents, including any recorded amendments;
- minutes of board meetings, annual meetings, and association correspondence;
- an inventory of all association property, facilities and assets, including plats, plans, engineering drawings of the development, and "as built" plans detailing the actual construction;

- the association's financial books and records including a recent audit report, a list of delinquent assessments (including the developer), status of reserves, and tax returns;
- association insurance policies, and current contracts;
- construction warranties, and the names of contractors who constructed the development, including common areas and facilities;
- copies of maintenance schedules and a list of repairs that have been performed;
- a list of owners in the development.

If the developer fails to provide the above materials, documents and records, they may be available from:

- Declaration, Covenants, & Bylaws
Record Room, Fairfax County Court House,
4110 Chain Bridge Rd., Fairfax, Va. 22030; tel. (703) 691-7320, press 3,4; or at
www.fairfaxcounty.gov/courts.
- Articles of Incorporation:
State Corporation Commission (SCC), Box 1197, Richmond, Va. 23218-1197;
(804) 371-9733, press 1; or www.state.va.us/scc/division/clk/diracc.htm.
- Development Plans:
Plan & Document Control, Department of Public Works & Environmental Services
(DPWES), 12055 Government Center Parkway, Fairfax, Va. 22035; tel. (703) 324-1548
or (703) 324-1730; or www.co.fairfaxcounty.gov/dpwes/homepage.htm.
- Unit Owners in the Association:
Fairfax County Department of Tax Administration, 12000 Government Center Parkway,
Suite 357, Fairfax, Va. 22035; tel. (703) 222-8234; or
www.fairfaxcounty.gov/dta/re/default.asp.

Developer's Bond and County Inspections – Developers are required to post a bond with the County (DPWES) to assure the completion of the public improvements. Bonded facilities normally include (but are not limited to) streets, sidewalks, curbs and gutters, storm drainage, storm water management ponds, sanitary sewers, utilities, and lighting. Common grounds and common elements such as parking lots, swimming pool and/or clubhouse, play courts and fields, tot lots, trails, etc. are also covered by the developer's bond. All bonded items are constructed per approved plans and County standards. The bond does not cover the residential properties, private homes, and driveways within the development. All habitable structures and related facilities are built to standards in the Virginia Uniform Statewide Building Code (VUSBC) and usually have warranties provided by the homebuilder and/or material and product manufacturers and suppliers.

The developer is responsible for mowing, landscape maintenance, snow removal on all roads, and all bonded facilities and common grounds until approved by the County and legally transferred to the association or to another party, i.e., VDOT (for public roads), or DPWES (for stormwater maintenance). No association funds should be expended for such maintenance, even if all lots have been sold and the owners have voting control of the association. All cost and responsibility belongs to the developer until official transfer to the association.

Construction problems should be reported as soon as discovered to determine whether a code violation exists. Under the Virginia Statute of Limitations, reporting a Code violation(s) to the local building official must occur in the first year of occupancy to place repair responsibility on the contractor or builder. Early reporting by property owners allows time for investigation, helps to preserve effective code enforcement, and may avoid placing the burden and cost of repairs on the owner. DPWES is responsible for inspections, approvals, and enforcement of the VUSBC through the first year. Concerns regarding bonded public facilities should be reported to the Environment and Facilities Inspection Division at (703) 324-1950 for investigation. The status of a developer's bond for public improvements is available from the Bonds and Agreements Branch at (703) 324-1590. Contact the Code Enforcement Branch at www.fairfaxcounty.gov/dpwes or at (703) 324-1937 to inquire or file a complaint about the following:

- structural or systems deficiencies (electrical; plumbing; heating, ventilating and air conditioning); or any structural or system work being performed without necessary and required permits;
- home improvement repairs or work (e.g., roofing, driveways, decks, hot tubs, etc.) being performed by unlicensed contractors;
- conditions such as standing water, inadequate drainage, lack of soil stabilization and/or erosion control should be reported to determine if corrections can be made under the bond or a conservation escrow.

Transition from Developer Control, GAP Report 3, Community Associations Institute, (Second Edition), 1996 includes a more detailed discussion of the transition process and suggests specific activities that the owners might be involved in during the transition.

Board of Directors:

State laws require condominium and homeowner associations to be governed by an “executive organ,” more often called the Board of Directors (or Trustees), the seat of authority in associations. The board manages and conducts the business of the association; it maintains and repairs the common property; enforces the covenants, conditions and restrictions as well as the adopted rules and regulations; and protects community standards and property values. In most associations, the number of directors is stipulated in the bylaws, but generally is large enough to

avoid being overburdened with work, but small enough to be efficient. Directors or Trustees are elected by the membership, usually for terms of one to three years, and often staggered to provide a continuing level of experience and continuity on the board while accommodating “new blood” in its makeup and decision making.

Hierarchy of Documents (Order of Precedence) – The board can delegate duties to the property manager, committees, and/or staff employees, however, the final responsibility and authority for decisions and for fulfilling its obligations remains with the board. Directors must be aware of the laws and legal requirements applicable to their association and apply due consideration in all decisions and actions of the board. The board’s responsibilities and scope of authority are set out in the following hierarchy of documents or order of precedence:

- Federal laws (Civil Rights, Americans with Disabilities, Federal Fair Housing Acts), regulations, and applicability of federal court decisions;
- State laws (Virginia Condominium Act, Property Owners Act, Nonstock Corporation Act), regulations, and court decisions;
- County/local ordinances, regulations, and court decisions;
- Declaration, Master Deed, and Covenants, Conditions and Restrictions (CCRs);
- Articles of Incorporation;
- Bylaws;
- Rules and Regulations; board resolutions.

Generally, board actions and decisions must yield to or comply with requirements or restrictions in documents of higher priority, precedence or legal standing. Federal laws at the top of the hierarchy are the most rigid and inflexible of documents and leave little or no discretionary choice. On the other hand, the adopted rules and regulations of the board’s making have the least legal standing and, therefore, are the best opportunity for flexibility and discretion. Between these extremes, the other documents provide more or less opportunity for discretion by the board. The board cannot adopt rules and regulations, or pass decisions that conflict with or violate provisions and requirements in the bylaws, the declaration, or a higher level of authority. Board decisions and resolutions cannot be in conflict on issues when the higher levels of authority are silent.

Directors must also understand and comply with the obligation of “shall” and “may” in any document. “Shall” means it is mandatory and that there is no permissible choice, whereas “may” means something may or may not be done – it is not mandatory but rather an opportunity for choice, using good business judgment, application of reasonableness, and understanding of the situation. Hopefully, all conflicts in the

governing documents were eliminated by initial review, but in case of any conflict, the order of precedence will control and decide the issue. For example, if the bylaws say that the board “shall” do (whatever) that conflicts with the recorded declaration or state law, the precedence or hierarchy of the restrictive document will prevail over the bylaws.

Duty of Loyalty and The Business Judgment Rule – Board members are charged with a duty of loyalty and fiduciary responsibility to use good business judgment in conducting the governance of the association. Directors must make sure that their decisions work to the benefit and protection of property values in general and without consideration of personal interest or gain.⁸ Members of the Board are protected by the business judgment rule. “So long as the board acts for the purposes of the cooperative, within the scope of its authority and in good faith, courts will not substitute their judgment for the board’s.”⁹ It is not illegal to err or even cause financial loss or other harm provided that the board can demonstrate reasonable investigation, consideration, thoroughness, and good business judgment in reaching its decisions. “A complainant must establish that a board acted negligently, willfully in bad faith, outside of its authority, or for discriminatory purposes. The mere fact that a decision turned out to be unwise or incorrect does not make Board members liable for any resulting harm or loss.”¹⁰ Board members must be very familiar with the documents of their association, stay informed about association issues, regularly attend meetings, and request that their perspective, opinion and/or decision be recorded in the meeting minutes if and when they disagree with a board’s action.

It is helpful to hold an orientation session for newly elected board members and/or provide each director with specific information about the association. A “Welcome Aboard” manual might include copies of association documents; i.e., bylaws, rules and regulations, budget materials, and minutes of the last three or four board meetings. This might be followed by an orientation session to inform new directors about association practices and procedures, reviewing current contracts, budgets, committee reports, etc.

Association Officers:

Each association’s bylaws specify that the board of directors must elect officers from among its members at the first meeting following their general election by the membership. This is the only occasion in either homeowner or condominium associations for which written ballots or secret voting may be used. The bylaws usually describe the duties of each officer, but often a board defines its officers’ and individual board member’s responsibilities to meet specific needs.

- President – The president is the chief executive officer, or principal officer, of an association and is responsible for seeing that association business is properly and promptly

⁸ “Avoiding the Three-Ring Circus: A Primer for Serving on your Board,” by John J. Brennan, III, Esq. and Vernon W. Johnson, III, Esq., Directors at Jackson & Campbell, P.C., Washington D.C. & Rockville, MD.

⁹ Levandusky v. One Fifth Ave. Corp., 75 N.Y.2d 530, 554 N.Y.S.2d 807, 553 N.E.2d 1317 (1990)

¹⁰ Ibid.

transacted. The president presides over meetings of the board and general membership meetings, signs all official documents including Memoranda of Lien (see Chapter 7), and often co-signs checks. The bylaws of an association may specify whether the president votes on each issue, votes only in the case of a tie, or votes at his/her discretion. The president should be a leader, have the ability to delegate authority, be firm but impartial, have a working knowledge of parliamentary procedure, and good common sense. It is important that he/she keeps an open line of communication to residents and is aware of their problems and concerns. The president is perceived as the official representative of the association and must clarify when he/she is speaking for the association and when he/she is speaking as an individual member.

- Vice President – The vice president usually acts in the president's place whenever the president is absent, disabled, etc. and may also preside over meetings if the president wishes to temporarily relinquish his position. A vice president is often assigned special responsibilities by the president or board; serving as the board's liaison with committees or acting as liaison with local government agencies.
- Secretary – The secretary is usually responsible for keeping accurate minutes of board and general membership meetings and maintaining all official association documents, membership rosters, correspondence, copies of bids and contracts, etc. The secretary may also keep the corporate seal and control of its use. The secretary may prepare and send notices of meetings, prepare the meeting agenda, and obtain information or materials for association business.
- Treasurer – Some associations require the treasurer to be responsible for some or all the association's financial affairs. The treasurer may prepare the annual budget, maintain the association's accounting system, collect and disburse funds, prepare financial statements, collect past-due assessments, make arrangements for an annual audit, and/or prepare and file tax returns. The treasurer should have professional qualifications in financial matters. Many associations prefer to retain a CPA, or include financial services in the contracted responsibilities of a professional association management company.

Board Meetings:

The purpose of board meetings is to conduct the business of the association. This ranges widely from contracting, making purchases or personnel decisions, forming community action plans, discussing problems such as covenant and rules violations, vandalism or unexpected replacement work, formulating a budget, and resolving a multitude of other matters. The bylaws usually specify the frequency or minimum number of board meetings to be held annually, and the quorum or director attendance necessary to officially conduct business. Most association boards meet monthly at a regular time and place to make it easier for association members to attend.

A meeting package including an agenda, draft minutes of the previous board meeting, committee reports, financial reports, or other information is normally distributed so that board members are better prepared to act on business items during the meeting. A meeting package

should be as informative as possible, including the agenda of actions and topics to be considered, the person(s) responsible for presentations (if any), action to be taken on an issue (information, consideration, or decision), and supporting and/or background documentation when necessary. A typical board meeting agenda may read as follows:

- | | |
|---------------------------------------|-----------------------------------|
| 1. Call to order | 6. Report of the management agent |
| 2. Approval of minutes | 7. Old business |
| 3. Treasurer's report, and acceptance | 8. New business |
| 4. Report of standing committees | 9. Member participation |
| 5. Report of special committees | 10. Adjournment |

It is important for each director to remember that the association is not exclusively his or hers. While the directors have the authority and responsibility to conduct the business and make the important decisions, all members of the association have the right to attend meetings and to know what is happening and proposed in their community. The state laws governing homeowner and condominium associations require that all board of directors meetings, workshops, committee meetings, and any other official assemblage of the association must be open to any member of the association. Some boards hold preliminary “working” sessions prior to the actual board meeting, particularly when there is substantial business to transact or when the issues to be addressed are complex or controversial. This gives board members an opportunity to discuss the agenda and time to obtain additional information to enable them to act efficiently on the matters in the upcoming meeting, but these too, must be open meetings.

In 2000, the laws were amended to require a notice of the time, date, and place of each meeting be published where it is reasonably calculated to be seen by a majority of the members (association newsletter, bulletin board, website, or e-mail). Further, any member who writes to request such notice must be sent a written notice by first-class mail or e-mail on a continual basis for a full year. Unless exempt from public knowledge (as in an executive session), a copy of the full agenda package and supporting materials for each meeting must be made available to review by the membership. The very clear intent of these amendments is to preclude private board meetings that attempt to avoid the members, and associations should openly publish the schedule and location of all meetings, and welcome the attendance and input of all interested members.

Further still, the board must designate a period of time during each meeting to allow any member present to voice his/her concerns or comment on any matter relating to the association. The board can adopt reasonable rules governing use of this time, i.e., a time limit for each person or subject. Members' comments are often matters for the record, or future attention – they don't have to be thoroughly discussed and decided right now; just heard and acknowledged. In this context, it is constructive to develop a policy of “Reflective Listening” to let the speaker know he/she was heard. “As I understand it, your concern is...” acknowledges and reflects the subject, point, and opinion or position. This is neither agreeing nor disagreeing, avoiding or deciding, or committing the board to any course of action or timetable; it's just listening to and accrediting the speaker.¹¹ Board meetings can create interest and involvement in the community by helping residents to feel informed, and a part of the decision-making process. It is constructive for the board to listen to, acknowledge, and follow up on issues presented by association members, and

¹¹ Ibid

to keep the membership informed of the discussions, progress and action concerning these issues.

Executive Sessions and Privileged Information: - Closed, executive sessions of the board are to discuss privileged, legal and/or private matters but only under very limited and specific subjects and circumstances. Executive sessions are not to be used to circumvent the open meeting requirements, to avoid the attending members, or to “skirt” nagging or contentious issues; the sole purpose of a closed executive session is to protect the privacy of these specific subjects only:

- personnel matters (employed staff or association members);
- consultation with legal counsel;
- contract discussion;
- pending or probable litigation;
- personal liability of members to the association; and
- punitive matters and hearings concerning violations of the declaration, covenants or rules, and consideration of levying assessments for such violations.

An executive session is only one part of an open board or membership meeting. A motion identifying the specific subject(s) and reason(s) for an executive session must be made, seconded, approved and recorded in the minutes of the open meeting. Following the closed session, the directors must reconvene in the open meeting and any agreement or decision resulting from the closed discussions must be voiced and substantially identified and/or voted in the reconvened open meeting for purpose of recordation in the minutes. While agreements can be decided, no votes are permitted in such executive session because the laws prohibit secret voting in board matters. Too often, the purpose and legal provisions for executive session are misunderstood, and sometimes flagrantly misused. It is a clear violation of state law to “adjourn the meeting to go into closed executive session” as many associations have routinely practiced. It is also a violation to convene and conduct an executive session prior to the start of any meeting regardless of how practical or well-intentioned the reason. The board could invite a lawsuit by enforcing a closed-session decision that was not substantially identified and recorded in a reconvened open meeting, and not publicized to the association members.

Board Decisions - The great majority of decisions affecting an association and its members are in the form of resolutions decided at board meetings. There are two main types of resolutions; 1) general or administrative resolutions that address routine matters such as the appointment of members to a subcommittee and, 2) policy resolutions that establish goals, procedures, precedents or restrictions and limitations to guide the

directors in making consistent and supportable decisions. Some policy resolutions will affect the business operation of the association; e.g., a resolution establishing a contracting or cash disbursement procedure. Others will affect the rights and obligations of members; e.g., a resolution proposing a rule to regulate the use of common areas or a parking policy. The board must ensure that members are informed that a policy change is being considered and that they are given an opportunity to present their views about the proposed policy. All resolutions must be moved, seconded, voted upon, and recorded in the meeting minutes as an official decision of the board. The Community Associations Institute, in Managing a Successful Community Association, (pp. 18-20), and the Institute of Real Estate Management, in The Owner's and Manager's Guide to Condominium Management, (pp. 61-62), stress care in adopting policy resolutions that affect the members' rights and obligations. They suggest that:

- a proposed policy resolution should be drafted as a formal resolution, including the authority of the board and the justification(s) for the policy;
- a proposed policy resolution should be published in the association newsletter (or website if one is established), or copies mailed to members for their information;
- a hearing should be scheduled to provide for member input and discussion of policy resolutions which affect their property rights;
- board action should be taken on the policy resolution only after consideration of the information received from the members. An exception to this is a resolution adopted as an emergency measure in which case the policy is adopted and becomes effective for a limited time period, pending a hearing and permanent adoption of the policy;
- once adopted, copies of resolutions should be sent to all association members, and a copy of the resolution should be included in a "book of resolutions" to maintain a continual record of all resolutions.

General Membership Meetings:

The state laws require all condominium and homeowner associations to hold at least one full membership meeting per year. In reality, this is still a board meeting, but for which the laws mandate a written notice to be sent to all members (even if no members have requested to be notified), and for which the laws prescribe an agenda item, the election of directors. The election of directors is one of the decisions reserved, by law and the recorded governing documents, for the members to decide by their vote. If the directors' terms are for multiple years and are staggered, only one or a very few positions may be elected each year.

Often, community apathy, lack of information and promotion, and "ho-hum" attitudes of members result in a poor or even non-quorum turnout that causes particular difficulties for the board and management. All board members should contribute an aggressive approach to generating membership participation in the annual election meeting. To this end, many

associations publish bio-sketches and written statements and goals of the candidates in the newsletter or website, conduct a “meet the candidates” night or similar activity, and generally run a “get out the vote” campaign to get the association’s members involved.

Other association matters and business may be conducted at this annual meeting, some of which may be voted on by the full membership and others by the directors only, in accordance with the governing documents. The annual meeting does not rescind or bestow different authorities or voting rights upon the directors or the members than is normal. Many associations require an annual audit report and/or annual budget to be presented to the membership for comment, discussion and/or explanation prior to approval voting. Some associations require budget approval by the full membership; others by the directors only. Nevertheless, these are logical matters to be scheduled and conducted at the annual meeting of all members.

Association bylaws normally state when the annual meeting is to be held, the notification procedures to be used, and the requirements for voting eligibility. Some associations publish the agenda for the meeting in the community newsletter, post notices of the meeting on bulletin boards, and mail notices to the residents to generate attendance. In some associations, the order of business for a general membership/election meeting is set by the governing documents. For others, the president, the board of directors, or the management determines the agenda or order of business. A typical agenda includes:

- | | |
|--|----------------------------------|
| 1. Call to order | 7. Election of officers |
| 2. Approval of minutes of last meeting | 8. Approval of assessment/budget |
| 3. Acceptance of treasurer’s report | 9. Old business |
| 4. Report of board of directors | 10. New business |
| 5. Reports of all committees | 11. Adjournment |
| 6. Report of management agent | |

Points for Effective Meetings - The president or presiding officer must follow the requirements of the law, the agenda, maintain order, and allow for all viewpoints. Knowledge of basic parliamentary procedure is helpful but strict adherence to Robert’s Rules of Order¹² is not essential. A successful meeting requires adequate planning, cooperation of all members, and should include:

- advance notice of a date, time and place convenient to a majority of members, distribution of the agenda, issues and procedures, and promotion of attendance;
- selection of a meeting place with enough seating, lighting, ventilation, and parking facilities;

¹² Robert's Rules of Order (ref. Appendix, pg. 261), is a commonly used, private publication that is sometimes specified in the Covenants and therefore binding upon that association's procedures, but is otherwise not binding on most associations.

- preparation of election ballots, financial statements, committee and general reports, etc., to be distributed at the meeting; and officers' preparation to discuss and answer questions about community issues and problems.

Discussions should not be so short as to prevent adequate consideration of an issue. The time allotted to each issue, however, should be limited to allow the meeting to proceed on schedule. A time limit also alerts members to make their point as quickly as possible and keeps discussion from digressing from the issue. The Fairfax County Public Library has many books that discuss effective meetings. County school and library facilities are available, rent free, for meetings of County nonprofit organizations. The County library has installed listening systems in its community and regional branches to assist persons who are hearing impaired. An association representative must contact/visit the school or library in advance for seating capacity, scheduling and a reservation. Meeting officers should:

- begin and end the meeting within 10 minutes of the scheduled time, adhere to the agenda and set time limits for the discussion of each topic;
- carefully present each motion by providing its historical background, clearly summarize the issue and guide the debate; and
- recognize in turn each person who wishes to speak, keep the discussion relevant to the issue, and maintain the announced time limits.

Quorum - A quorum is the minimum percentage or number of voting members, required by the bylaws to be present in person (or proxy, if permitted), to legally transact business. Quorum size varies from association to association, often being a higher percentage of members for small associations to assure a representative number of voters is present. A 10% requirement for an association of 250 members is more adequate representation of a community than a 10% requirement in an association of 40 members. Virginia laws state that if a quorum is present at the start of a meeting, it is considered to be present for the whole meeting, even if some attendees leave before the meeting is adjourned and those remaining number less than the quorum requirement.

Condominium associations usually have more stringent requirements for a quorum because the unit owners are more dependent upon their association for building maintenance and services, and the association's decisions more closely affect the residents due to the undivided ownership of the common elements. Quorum requirements are often higher for actions affecting property rights or financial obligations of members than for normal association business. Actions to increase the assessment by more than an amount permitted annually by the documents, or a special assessment for capital improvements, or to amend the Covenants, bylaws, or articles of incorporation often require a larger quorum or percentage of the members.

Proxies - Association members should be encouraged to vote in person, but if not possible, proxies should be used if permitted by the association's documents, because they provide for a greater percentage of the allocated owner/member votes to be cast. A proxy is "a person who is substituted by another to represent him, particularly in some meeting or public body; an agent representing and acting for a principal. A proxy is also the instrument or document containing the appointment of such person".¹³ In common terms, a proxy is the signed permission of a valid owner/member that designates another person to cast a vote in place of the owner/member. To be valid, every proxy must designate to whom it is assigned, and must be signed and dated by the owner/member. Proxies are valid only for a specified time period or meeting date. Most associations' bylaws permit proxies for officer elections and association matters, while others permit proxies only for director/trustee elections but not for other matters. The bylaws usually limit the number of proxies that can be assigned to and voted by a single person. A standard proxy form, instructions for completing, and a procedure to accept and record proxy votes should be established by the board and distributed with the official notice of the election meeting.

Two types of proxies, "instructed" and "uninstructed", are commonly used. An instructed proxy authorizes the assigned person to cast the member's vote in a designated way on each specific issue, e.g., to vote for/against a specific slate of nominees, or for/against proposed change(s) in the documents, etc.. An uninstructed proxy does not designate how the authorized person is to vote on each issue. The governing documents of an association allocate votes to the owner/members, however, some documents are silent on who may be assigned by an owner/ member to cast a vote by proxy. While it may not be a violation to choose a non-owner, the voting membership should be reminded (via the proxy instructions) that non-owners have no vested interest at stake and may not understand the impact of a particular issue or director/trustee position to be voted. Moreover, contracted management should have no part or involvement in deciding association elections. Assignment of a proxy to a management company, its on-site agent, or representative (who is not an member of the association) causes a serious conflict of interest, a breach of professional and ethical standards, and could invite a liability claim against the directors and/or the association.

Voting Procedures - Association bylaws often specify that the election of board members must use written ballots but allow discretion as to the method of voting when deciding other issues. Normally this will depend on the preference of members, the size of the association, and the sensitivity of the issue. The Virginia Condominium Act and the Virginia Nonstock Corporation Act have specific provisions concerning quorums, proxies and voting procedures which may be applicable depending on whether the association's bylaws sufficiently detail these matters. For routine business, a voice vote is the quickest and most common. If a voice vote does not give a clear decision, a standing vote, a show of hands, or roll call vote can be taken but may be impractical for a large group. Written ballots are commonly used for important or controversial

¹³ Henry Campbell Black, M. A., Black's Law Dictionary, Revised Sixth Edition; West Pub. Co., St. Paul, Minn., 1990.

issues, and when members wish to vote without revealing their choice. For written votes, paper ballots are distributed to the voters, and are then collected and counted by previously designated persons. The results of the voting should be announced prior to adjournment of the meeting, but may be announced after the meeting is concluded.

Minutes - Applicable Virginia statutes and most associations' bylaws require that factual and accurate minutes be kept of all board of directors meetings, annual meetings, and special meetings of the members. The importance of accurate minutes cannot be stressed enough because often the minutes are the only record of official decisions, directions, and actions of the board. If there is no verifiable record, a decision cannot be enforced. Minutes officially record the time, date and place of each association meeting, the presiding officer and board members in attendance, the subjects discussed, and the actions taken at the meeting. Title and sufficient information to establish its background, the action to be taken if any, and the reasons for the action should introduce each topic. Only important points in the discussion should be recorded along with any decision, and including the votes for or against an issue if voting takes place. A subject or proposal referred to committee or tabled pending further information or discussion should be so recorded in the minutes.

Too often, meeting minutes become lengthy with the intent of being thorough and correct. The purpose of a meeting is to conduct the business of the association; and the minutes should record what was done or decided, and not what was said or by whom. The minutes should never reflect upon the character, emotion, or personality of any person, or give the secretary's opinion, favorable or otherwise, on anything said or done in the meeting. For important motions, however, the name of the mover should be recorded along with the exact final wording, including amendments, upon which the subsequent vote is taken. The recording secretary should be familiar with "Minutes and Reports of Officers" of Robert's Rules of Order Newly Revised, 10th Rev. edition (November 14, 2000). Meeting minutes, including motions, amendments and votes should be signed and dated by the president or secretary once they have been approved, and should be kept in a binder, file or "book of minutes" for later reference. It may also be helpful to file copies of meeting notices, financial statements, committee reports, and other documents along with the minutes, making them part of the association's official records. Complete minutes can be valuable to an association should it need to document or defend its actions.

Committees:

The Virginia Nonstock Corporation Act provides that a board of directors may create one or more committees and appoint members of the board or the association to serve on the committee. Each committee may have two or more members who serve at the pleasure of the board. The role of committees depends to a great extent on an association's responsibilities and size. Many small associations can function without substantial committee assistance, but larger associations need effective committees to assist the board in handling the overall workload.

Committees assist the board by researching issues and assuming responsibility for specific aspects of association operation. The bylaws of most associations establish an architectural review committee and a nominating committee and give the board of directors the power to appoint additional committees as the need arises. Most committees are advisory in nature, but under the provisions of the Virginia Nonstock Corporation Act, a board may adopt a resolution delegating limited authority to a committee unless its own documents specifically prohibit such delegation. Committees also help foster a broader member interest and participation in the association and can help keep the board aware of their concerns.

Committees are of two different types: standing committees, which handle ongoing aspects of an association's operation, and special or ad hoc committees, which are established to perform a specific task and are dissolved when that task has been completed. Some associations require that one or more directors serve on each committee. Others appoint non-board members to all committee positions but provide some form of supervision from or liaison with the board. The liaison is frequently the vice president or a board member whose expertise or function in the association corresponds to the committee's area of responsibility; e.g., the treasurer may serve as liaison with a budget committee. Board involvement keeps track of committee activities and lets the Board know if a committee has effective leadership and sufficient members.

The board of directors should write general committee guidelines or terms of reference that portray the association's policy concerning committee appointments, operations and composition. Written guidelines eliminate potential problems and misunderstandings and clarify the prerogatives of the board. Prior to appointing members for a specific committee, the board should prepare guidelines for the committee, spelling out its purpose, authority, resources, and responsibilities. A timetable should be established for progress and final reports to be submitted. The Sample Committee Guidelines at the end of this chapter can easily meet the needs of individual associations and different committees.

The size of a committee should be based on its purpose and the amount of work involved, being large enough to present varying points of view, while not being so large as to be inefficient. The chairperson should be someone with leadership qualities and who works well with the board. It is also helpful if the chairperson is known and liked in the community. It may be advisable to consult with the chairperson and obtain suggestions when choosing members of a committee. While the committee should not be composed of the chairperson's friends, it can be helpful to appoint persons with whom he or she can feel comfortable and work well. The primary criterion for appointment to a committee should be a willingness to work, although academic background, work skills and related experience can be very helpful. Care should be taken to choose persons who will work for the goals of the entire community, not just the desires of a small faction. Personalities can also be considered and used productively when forming committees. If a group must work closely together, compatibility is important and a committee composed of similar personalities may be most efficient. If the group is to explore alternatives and come up with new ideas, diverse personalities may prove most effective.

Committee members can often be found among those who attend meetings regularly, ask good questions and show an interest in the association. Candidates can also be found by a

periodic questionnaire asking about residents' interests, areas of expertise, and availability. The board should not overlook retired residents who often have time to participate in community activities, or non-working parents who may be aware of the problems and concerns of the young people in the community. Committee work may present an opportunity for new residents with experience in another association to get involved in association activities. When appointing persons to committees, the work involved should emphasize the importance of the committee and the attitude of the board. When a committee submits a report or recommendation, the board should give it careful consideration and show appreciation for the personal efforts involved. A note of appreciation in the newsletter or other type of recognition can do this. If it is necessary to reject or disregard a committee recommendation or report, it should be done diplomatically and courteously. The reason for the board's decision should be explained to the full committee and their work acknowledged just as if adopted by the board.

Architectural Review Committee - The Covenants and bylaws may specify the makeup of an architectural review committee and/or outline the procedures to be followed by:

- 1) an owner who is applying for an architectural change, and 2) by the association when approving or rejecting a proposed change. The time period for committee rejection of a proposed change is frequently specified as 30 days maximum. If there is no response in the required time limit, the resident is deemed to have complied with the requirements and the proposed change is considered to be approved.

The architectural review committee (ARC) is normally responsible for assuring that any and all changes to house designs or the exterior of individually owned properties, or to the common property, conform to the covenants, are in harmony with the design of the community, and will not adversely affect property values. The governing documents of some associations contain a detailed list of changes that may be made by owners while others simply state that any structure, wall, fence, exterior addition or change is subject to the approval of the architectural control committee. The latter gives an association more latitude to adapt to changing styles, customs and materials, but also places a burden on the association to establish and publicize reasonable standards and guidelines for exterior changes to minimize or avoid subjective evaluations.

Typically the most active, and frequently controversial, of association committees, ARC members must fairly and uniformly apply the requirements and restrictions of the association's governing documents, and not their personal likes or dislikes or tastes. Only the requirements and limitations of the governing documents are legally enforceable. It is important to remember that ARC decisions affect an individual's procedure and is permitted to make the proposed change. The committee is normally responsible for:

- developing and publicizing the procedures that residents must follow when applying to the association for permission to make an exterior change;
- developing and publicizing architectural guidelines, subject to board approval, to assist residents in proposing acceptable changes to their property;
- reviewing all applications for house designs and exterior changes and additions;

- recommending to the board of directors approval or disapproval of applications as consistent/inconsistent with the covenants and architectural guidelines; and
- investigating complaints and violations of the architectural controls and recommending action to the board.

The committee's primary role is to educate owners in the community of the reasons for and existence of the association's architectural controls, guidelines and procedures. This educational process is an ongoing responsibility and can be achieved by articles in the newsletter, periodic reissuing of procedures and guidelines, including information about the committee among the welcoming materials provided to new residents, etc. The operating guidelines for the committee should include:

- the committee should meet regularly, or if the amount of work or number of applications received does not warrant this, it should meet promptly upon submission of an application or when business under its jurisdiction does arise;
- minutes of all committee meetings should be kept; all approved architectural changes should be monitored to make sure they are constructed as approved; and
- a file of all applications should be maintained. This assists a committee in making consistent decisions by providing a record of action taken on previous applications. A copy filed with records on the individual home may also be advisable should questions arise in the future.

The procedure for the submission and approval of architectural changes should be straightforward and provide the owner(s) with an opportunity for a fair consideration of the request. Such a procedure might include:

- a standard application form to be filled out by the requesting owner and submitted to the ARC;
- sufficient information required by the application form (plans showing the location of the change, samples of the materials, color swatches, specifications, etc.) to allow the committee to make or recommend a decision;
- the right of an applicant to appear before the committee to discuss his/her application and to answer any ARC questions about the proposed change(s);
- an appeal procedure to allow for reconsideration of a denied application;
- a specified (maximum time limit is usually 30 days) for the ARC decision to be returned to the applicant, giving reasons in writing, for a denial.

Publication of the architectural guidelines listing permitted or prohibited changes and the standards by which an application for architectural change is judged, will help to assure that each application is treated fairly. Architectural guidelines must be in accord with the provisions of the covenants and County Zoning Ordinance. They should also be

compatible with the terrain and architecture of the community, and deal with the normal changes owners frequently want to make in their properties, fences, patios, storage sheds, antennas, chimneys, metal flues, etc. The guidelines should be reasonable and not restrict acceptable building materials to the most expensive or to those that are not readily available.

The guidelines should emphasize that association approval of an architectural change does not relieve owners of the responsibility for obtaining County approval and/or permits for a project. County and association approvals are entirely separate, distinct, and are not related. Depending on the nature and scope of the work, one or more structural, electrical, plumbing, and mechanical (HVAC) permits may be required for a vast range of home improvement projects. Contact the Permits Branch, Department of Public works and Environmental Services at www.fairfaxcounty.gov/dpwes or at (703) 222-0801. The Department has a variety of free pamphlets on home projects that may prove helpful to owners and associations.

Violations of architectural guidelines and procedures should be handled promptly, using an association's standard rule enforcement procedures. (See the discussion of rule enforcement procedures found in Chapter 3, in the section entitled "Rules and Regulations"). In cases where a violation of the association's architectural controls is also a violation of the County zoning or building code, the County may be able to assist the association by enforcing the County Code provision. For information concerning building code violations, contact the Department of Public Works and Environmental Services, Code Enforcement Branch at www.fairfaxcounty.gov/dpwes or tel. (703) 324-1937. Zoning code information is available from the Office of Comprehensive Planning, Zoning Enforcement Branch online at www.fairfaxcounty.gov/ocp/ or at (703) 324-1300. More information about architectural control guidelines and procedures is in: Architectural Control, GAP Report 2, Community Associations Institute, 1986.

Nominating and Elections Committee - A nominating committee makes certain that the nominating schedule and procedures are fair, well-organized, and comply with the requirements outlined in the governing documents. There should be at least one qualified candidate for each position to be filled, and each candidate should understand the responsibilities and duties of the office. The background and qualifications of every candidate should be publicized for the benefit of all voting members. The bylaws of many associations require that a nominating committee be appointed each year at the annual meeting to serve for the following year. This committee may also be responsible for the election itself, publicizing the voting eligibility requirements and procedures, preparing the ballots, and conducting the election. In some cases, the association's management company may perform the procedural tasks under supervision of the board of directors.

The nomination process commonly begins when the committee announces the upcoming election (through the newsletter or election bulletin) and invites all members to run for any of the positions to be elected. Any member of the association can run for any

position, provided that he/she meets the qualifications stated in the bylaws or the association's documents. Some nominating committees actively recruit candidates to assure a minimum number of nominees for the offices. In other associations, the committee recommends a slate of candidates from among several interested, qualified persons for each position. In this case, the nominating committee chooses those nominees it feels are most capable and/or compatible in the best interests of the association. Prior to the search for candidates, the nominating committee should know the duties of the positions to be elected and should determine if the current board members and/or officers whose terms are expiring have appropriately fulfilled their responsibilities. The committee should know if the incumbent regularly attended meetings, completed assignments, participated in association events, and if they are even interested in serving another term. Current office holders may recommend persons they have worked with, such as committee chairpersons, as prospective candidates. In large associations or those with distinct sections or types of housing, the committee may want to nominate persons from the differing constituencies to represent the interests of all residents.

Nominating procedures most often require that nominations be submitted in writing on a form to be filled out and signed by the candidate. This form should be submitted to the nominating committee or association secretary by a specific date or number of days prior to the election. Often the form must be endorsed by a number of association members. The nomination form can contain space for the candidate to list his/her qualifications, and to explain his/her "platform" or reason for running for office. Once a slate of nominees is chosen, the committee disseminates information about all of the candidates through the newsletter, by sponsoring a "candidates' night" or by preparing special election bulletins.

The election ballots should contain voting instructions, list the vacancies to be filled and the nominees for each vacancy, and leave space for write-in candidates. The procedures for proxy voting, if permitted, should be publicized and proxy ballots or forms prepared and distributed. Some associations send proxy ballots to each member along with the meeting notice, while other associations include them in their newsletter. Each year, an incorporated association's rules should be checked against the Nonstock Corporation Act to ensure conformance with amendments that may have been made to either the Act or the association's rules.

Prior to the annual meeting, the association should notify any members who are not eligible to vote. Many bylaws state that members who are delinquent in their assessment payments or in violation of the covenants may not vote at association meetings. Such members, however, may still attend the meeting. A procedure must be established to check voting eligibility as each ballot is distributed. The slate of officers chosen by the committee should be read, other nominations from the floor accepted, and each candidate should introduce himself and make a brief statement of qualifications, interest and/or ideas for the association. Tabulation of the ballots and announcement of the results should be completed as soon as possible, preferably at the meeting.

Most associations use their president's home address for association mail. The association's address often changes every year or so unless the same person serves

consecutive terms. Consequently, numerous associations become “out of touch” or “incommunicado” with the County and lose out on many informational mailings. New contact names and mailing addresses should be provided to the District Supervisor’s office and to the Fairfax County Office of Public Affairs at (703) 324-3187. This affords the maximum opportunity for associations to be contacted by the Supervisor or the County about issues, events or matters of importance.

Budget/Finance Committee - The budget committee advises the board about the association’s financial matters. Its responsibilities may include:

- assisting in the preparation of the annual budget (the committee may meet with other committee chairpersons to identify all areas of association operation);
- conducting a public hearing to obtain member input into the association’s preliminary budget;
- making recommendations concerning assessments and collection procedures, budget procedures, audits, tax preparation, and insurance;
- monitoring association finances to assure expenditures are reasonably close to budget projections; assisting the treasurer with his/her responsibilities;
- reviewing, monitoring, and making recommendations concerning refuse and recycling collection costs. Most refuse collection contracts require at least 90 days notice to terminate; if missed, the contract renews automatically, often at a higher rate.

Grounds Maintenance, Landscaping and/or Environmental Improvements Committee(s) - This committee(s) assists and advises the board of directors about maintaining and improving the physical environment in the community. In condominium and apartment-style communities, the maintenance committee may also inspect lobbies, hallways and other interior common areas for the adequacy of janitorial services and recommend long-term maintenance and improvement needs or projects. The duties and responsibilities of the landscape maintenance committee may include:

- inspection of the grounds for maintenance deficiencies and needed repairs; recommending improvements to be made in the landscaping and the general appearance of the common areas;
- development of a grounds maintenance program which includes maintenance tasks and their frequency; preparation of a budget for grounds maintenance and improvements;
- publicizing/informing owners which maintenance responsibilities belong to the association and which belong to the residents; and,

- preparing bid specifications for landscaping and grounds maintenance contracts, evaluating bids and making recommendations to the board for such contracts.

Communications & Community Relations Committee - This committee provides for various forms of communication between the association and the residents. Its responsibilities may include:

- publishing a newsletter on a regular basis to keep residents advised of actions taken by the board of directors, upcoming community activities, recent house/unit sales, and other community concerns;
- welcoming new residents, preparing a community directory, and surveying community needs and interests;
- distributing copies of the rules and regulations as they are amended.

A newsletter can be a valuable association tool to keep residents informed about community matters, helps residents feel part of the community, stimulates their interest in the community association, and can be fully or partially self-supporting through the sale of advertising space to local businesses. It need not be elaborate or lengthy and is generally sufficient to:

- provide a regular column for a message from the association president or board of directors;
- report on actions taken at meetings and events that all residents may not have attended (some associations publish the minutes of board meetings and important committee meetings to accomplish this);
- inform and/or remind residents of association procedures, rules or requirements; and discuss issues of community interest such as budget or maintenance concerns, nearby rezoning cases, or local government actions;
- advise residents of upcoming business and social events in the community; provide information of general interest such as a list of babysitters in the community, news of area school and church events, goods and services for sale through a classified section, and Neighborhood Watch news.

Welcoming Materials - It is imperative that new residents be informed about the benefits and responsibilities of living in a homeowners' association. The welcoming procedure, should emphasize the need and desire for the participation and cooperation of new residents. This information should not be confused with the disclosure packet or the Resale Certificate.

Welcoming materials provided to new residents frequently include:

- a welcoming letter explaining the purpose, goals and objectives of the association, a list of services provided by the association, and the rights and responsibilities of residents;
- a copy of the association's documents and rules and regulations, architectural control guidelines, and complaint procedures;
- information concerning board and member meetings, the names of board members and/or management personnel, their telephone numbers, and hours for contact;
- a map of the community and a copy of the latest newsletter, a letter asking new residents to list their interests and abilities, and inviting them to participate in association activities;
- information about the County and its government, bus schedules, schools, emergency phone numbers, location of shopping areas and other interest items.

Recreation/Events Committee - The activities of the recreation committee will depend on the facilities in the community and the interests of the residents. Some recreation committees limit activities to supervision of the community pool, tennis courts, and playground(s). Other committees sponsor social events, organize sports teams, plan trips, and arrange educational activities. If there are several recreational facilities in the development, subcommittees or separate committees are often formed for each facility. Recreation committees are generally responsible for:

- planning a seasonal program, preparing budget recommendations;
- proposing rules governing the use of each recreational facility;
- inspecting each recreational facility for maintenance and repair needs;
- making recommendations to the board of directors concerning long-term maintenance of each facility.

Sample General Committee Guidelines

1. Composition:

- a. Committees shall be composed of three or more persons based on the purpose of the committee, its responsibilities and workload. One of the members shall serve as chairperson.
- b. Each member of a committee shall be an association member. One or more members of the board of directors may be appointed to serve on a committee.
- c. The chairperson and other members of the committee shall be nominated by the association president and approved by the board of directors to serve at the pleasure of the board of directors for a period of one year. A removal action shall require a two-thirds vote of the board at a meeting at which a quorum is present.

2. Operation:

- a. The committee shall meet at the call of the chairperson who shall preside at the meetings, and present the reports of the committee to the board of directors. The committee chairperson, or a representative from the committee, shall attend all regular meetings of the board of directors.
- b. The committee members shall elect a Vice-Chairperson who shall act in the absence of and with the powers of the chairperson.
- c. A quorum for the conduct of committee business shall consist of a majority of the members of the committee.
- d. Each member of the committee, including the chairperson, shall have one vote; and an affirmative vote of a quorum shall constitute a decision of the committee.
- e. The committee shall maintain minutes of its meetings and maintain adequate records of its activities, reports, expenditures, etc. Minutes of all committee meetings will be submitted to the board of directors within two weeks after the meeting.
- f. The committee shall submit copies of all proposals to the board for approval. If association funds are needed to carry out approved proposals, a list of items and their approximate cost shall be submitted with the proposal.
- g. The committee shall establish such procedures for the administration of its function, as it deems necessary, subject to the approval of the board.